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David Weissbrodt

Maria Luisa Bartolomei

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The Effectiveness of International Human Rights Pressures: The Case of Argentina, 1976-1983

David Weissbrodt*
and Maria Luisa Bartolomei**

One significant gap in the burgeoning academic literature of international human rights law is the lack of research related to the impact of international and national procedures on the actual protection of human rights.¹ It is remarkable that al-

* Briggs & Morgan Professor of Law, University of Minnesota. This Essay served as the basis of the Briggs & Morgan Professorship of Law inaugural lecture on October 5, 1989. The authors wish to acknowledge helpful comments from Katherine Brennan, Octavio Carson, Christina Cerna, Paul Fraser, Marketa Freund, Carolyn Glick, Robert Hudec, Garrison Kaufman, Beverly Keene, John Mandler, Frank Newman, Nigel Rodley, Sonia Rosen, Ron Schlatter, and Kathryn Sikkink.

** Candidate for LL.D. degree, University of Lund, Sweden. This Essay took as a point of departure: M. Bartolomei, *Gross and Massive Violations of Human Rights in Argentina, 1976-1983* (1990) (draft LL.D. thesis in International Law, University of Lund, Sweden).

1. A few scholars have begun to explore this uncharted territory with varying success: E. LANDY, *THE EFFECTIVENESS OF INTERNATIONAL SUPERVISION: THIRTY YEARS OF I.L.O. EXPERIENCE* (1966); V. LEARY, *INTERNATIONAL LABOR CONVENTIONS AND NATIONAL LAW: THE EFFECTIVENESS OF THE AUTOMATIC INCORPORATION OF TREATIES IN NATIONAL LEGAL SYSTEMS* (1982); A. SCHMID, *RESEARCH ON GROSS HUMAN RIGHTS VIOLATIONS* (1989); Berg, *Human Rights Sanctions as Leverage: Argentina, A Case Study*, 7 J. LEGISLATION 93, 111-12 (1980); Martin & Sikkink, *U.S. Policy and Human Rights in Argentina and Guatemala, 1973-1980*, in *INTERNATIONAL BARGAINING AND DOMESTIC POLITICS: AN INTERACTIVE APPROACH* (P. Evans, H. Jacobson & R. Putnam eds. forthcoming 1991); Sanders, *The UN Working Group on Indigenous Populations*, 11 HUM. RTS. Q. 406, 422-27 (1989) (concerning Bangladesh); Shelton, *Utilization of Fact-Finding Missions to Promote and Protect Human Rights: The Chile Case*, 2 HUM. RTS. L.J. 1 (1981); Suter, *Campaign Against Torture: The Effectiveness of Amnesty International*, SOCIAL ALTERNATIVES, vol. 1, nos. 6/7, 1980, at 39; Weissbrodt, *International Trial Observers*, 18 STAN. J. INT'L L. 1, 110-14 (1982); K. Sikkink, *The Influence of U.S. Human Rights Policy on Argentina and Guatemala* (draft memorandum, July 1989); see also B. CARTER, *INTERNATIONAL ECONOMIC SANCTIONS* (1988); L. KAPUNGA, *THE UNITED NATIONS AND ECONOMIC SANCTIONS AGAINST RHODESIA* (1971); MacDonald, *Economic Sanctions in the International System*, in CAN. Y.B. INT'L L. 61, 80 (1969); Taubenfield & Taubenfield, *The "Economic Weapon": The League and the United Nations*, 58 AM. SOC'Y INT'L L. PROC. 183, 184-86 (1964).

most no academics or activists have even attempted to assess the effectiveness of human rights measures. Of course, demonstrating effectiveness in any area of human endeavor, particularly international human rights work, is very difficult. Many human rights advocates investigate abuses and write letters to governments because they believe that speaking out is better than remaining silent in the face of repression. When challenged, they can also point to anecdotal evidence of prisoners that have been released, torture that has stopped, and executions that have been prevented. More formal proof of results, however, is much more difficult to find.

This Essay focuses on human rights abuses perpetrated by the Argentine government from 1976 to 1983, and international efforts to halt those abuses. The Essay principally compares the effectiveness of the Inter-American Commission on Human Rights of the Organization of American States with the impact of several United Nations bodies in regard to human rights in Argentina. There are at least two reasons for selecting the case of Argentina to assess the effectiveness of human rights pressure. First, an indispensable historical record exists on events in Argentina during the relevant period. The Argentine government made considerable efforts at least for the first several years after 1983 to investigate what happened.² The trials of some of the leaders who were responsible³ for the abuses adduced much evidence, and many of the victims wrote accounts of their experiences.⁴ Furthermore, extensive scholarly literature documents the period,⁵ although this Essay is the first to correlate human rights efforts with results. Second, relatively reliable statistics exist about disappearances, the most prevalent form of human rights abuse.⁶ Such statistics permit an analyst to track the prevalence of abuses against the human rights measures.

The difficulties in this analysis, however, are impressive.

2. See, e.g., ARGENTINE NATIONAL COMMISSION ON THE DISAPPEARED, *NUNCA MÁS* (1986).

3. See, e.g., AMNESTY INTERNATIONAL, ARGENTINA: THE MILITARY JUNTAS AND HUMAN RIGHTS, REPORT OF THE TRIAL OF THE FORMER JUNTA MEMBERS, 1985 (1987) (AI Index: 13/04/87) [hereinafter AMNESTY INTERNATIONAL, JUNTA TRIAL].

4. See, e.g., J. TIMERMAN, PRISONER WITHOUT A NAME, CELL WITHOUT A NUMBER (1981).

5. See, e.g., A. FONTANA, FUERZAS ARMADAS, PARTIDOS POLITICOS Y TRANSICIÓN A LA DEMOCRACIA EN ARGENTINA (1984).

6. See, e.g., *Report of the Working Group on Enforced or Involuntary Disappearances*, at 21, U.N. Doc. E/CN.4/1986/18 (1986).

No one has systematically interviewed the high government officials or the less well known perpetrators of human rights abuses to learn why they started killing people and why they stopped. Moreover, many different influences can affect a government's conduct. External pressures are often far less significant than internal events.⁷ In the case of Argentina, Ronald Dworkin wrote: "The junta's power was finally broken, not by any domestic or international concern about human rights, but by its own economic and, in the end, military ineptitude."⁸ Dworkin's belief in part reflects the popular view that the 1982 war in the South Atlantic brought down the Argentine military government.⁹ Dworkin realized, however, that the disappearances had ended far earlier in 1979. The question is why did they end? There is no simple answer.

This Essay first reviews the human rights situation in Argentina. Part II then identifies early indications of the crisis that prompted international measures. Part III describes the responses of various organizations to the situation in Argentina. This section notes the efforts of Argentine organizations to respond to the disappearances and other violations; it also relates the activities of international nongovernmental organizations in alerting the world community to the Argentine crisis. Part III further describes the factfinding and reporting process of the Inter-American Commission on Human Rights and assesses the United Nations response. Finally, the Essay compares the effectiveness of these various international measures toward the prevention of human rights abuses and suggests which measures apparently led to the cessation of disappearances in Argentina.

I. THE HUMAN RIGHTS SITUATION IN ARGENTINA

On March 24, 1976, a military coup overthrew the government of Maria Estela Martinez de Peron with the objective of

7. Issues as to whether trade, aid, or other human rights measures might involve impermissible intervention into the internal affairs of other nations or might constitute impermissible coercion at international law fall outside the scope of this Essay. See U.N. CHARTER art. 2, paras. 3, 4, 7; see, e.g., R. HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* 58-130 (1963); M. KAMMINGA, *INTER-STATE ACCOUNTABILITY FOR VIOLATIONS OF HUMAN RIGHTS* 127-91 (1990); Bowett, *International Law and Economic Coercion*, 12 VA. J. INT'L L. 245 (1976).

8. Dworkin, *Introduction*, in ARGENTINE NATIONAL COMMISSION ON THE DISAPPEARED, *supra* note 2, at xv.

9. AMERICAS WATCH, *TRUTH AND PARTIAL JUSTICE IN ARGENTINA* 8 (1987).

stabilizing the economy and suppressing "leftist subversion."¹⁰ During a "Process of National Reorganization," the military government in Argentina dissolved the Congress and other legislative bodies, dismissed judges — including judges of the Supreme Court with life tenure — and authorized the ruling Junta to appoint new members of the Supreme Court and President General Jorge Rafael Videla to appoint lower federal court judges.¹¹ It also suspended political activity, political parties, trade union rights, and constitutional rights; decreed "anti-subversive" statutes; and authorized the military to arrest "subversives."¹² Initially, the military government focused its repressive measures against the members of "guerilla groups" and militant groups in factories. The "dirty war," however, soon extended much further: during 1976 and 1977 it is estimated that the military government imprisoned, tortured, killed, or caused the disappearance of thousands of persons.¹³ More than eighty percent of these victims were between the ages of twenty-one and forty, thus illustrating that the government's principal target was younger people.¹⁴ Another source estimates that, from 1976 to 1983, approximately 12,000-15,000 persons disappeared in Argentina.¹⁵ In addition to the disap-

10. *Id.* at 4-5.

11. *Id.*

12. The authors recommend the new book I. GUEST, *BEHIND THE DISAPPEARANCES, ARGENTINA'S DIRTY WAR AGAINST HUMAN RIGHTS AND THE UNITED NATIONS* (1990), that tells the full dramatic story of the disappeared and the international efforts to respond to their plight. See also D. PONEMAN, *ARGENTINA: DEMOCRACY ON TRIAL* 21-107 (1987); J. SIMPSON & J. BENNETT, *THE DISAPPEARED AND THE MOTHERS OF THE PLAZA* 33-113 (1985); Pion-Berlin, *The Fall of Military Rule in Argentina: 1976-1983*, 27 J. INTERAMERICAN STUD. & WORLD AFF. 55, 57 (1985); J. Marie Griesbraber, *Implementation by the Carter Administration of Human Rights Legislation Affecting Latin America* (1988) (unpublished Ph.D. thesis).

13. The National Commission Concerning the Disappeared identified 8,960 persons who had disappeared during the period 1973 through 1983 and whose fate had not been ascertained by November 1984. COMISION NACIONAL SOBRE LAS DESAPARICION DE PERSONAS, *NUNCA MÁS* 16 (1985). The Commission documented the greatest number of disappearances during 1976 and 1977. *Id.* at 298. Data concerning the number of habeas corpus petitions filed during this period indicate a similar pattern. During the years 1976 through 1979 the courts received 5,487 petitions on behalf of prisoners. This number can be compared to the period 1973 through 1975 when 1,089 petitions were filed or the period 1980 through 1983 when 2,848 petitions were submitted. *Id.* at 401.

14. *Id.* at 294. Over 30% of the disappeared were workers; nearly 18% were other employees; over 20% were students; over 10% were professionals; and the remainder included journalists and housewives. *Id.* at 296.

15. There remains a divergence of views as to the number of disappeared. Americas Watch and Amnesty International have accepted the 12,000-15,000

peared persons thousands of Argentine nationals were acknowledged by the government to be in detention. For example, in January 1978, the Argentine government admitted that it was holding 3,472 persons under preventive detention.¹⁶ Many of those prisoners were tortured, killed, or both.¹⁷

II. FOREIGNERS CAUGHT IN THE NET

The families of the many young people who were abducted during the "dirty war" tried to discover what happened to those who disappeared. The families sought explanations from the Argentine authorities, but the authorities refused to acknowledge that they had custody or knowledge of the individuals who disappeared.

Publicity of foreign abductions gave the outside world its first indication of what was occurring in Argentina. For example, Gwenda Loken Lopez, a Minnesota native who had married a young Argentine lawyer, was abducted in April 1976, tortured, and then released in September 1976 after Representative Donald Fraser of Minneapolis obtained the intercession of Alejandro Orfila, the Argentine Secretary-General of the Organization of American States.¹⁸ Father Patrick Rice, an Irish priest working in Argentina, was detained in October 1976 and later released due to the efforts of the Irish government.¹⁹ Dagmar Hagelin, a seventeen-year-old with joint Swedish and Argentine nationality, was shot, wounded, stuffed in the trunk of an automobile, and abducted by a group of men outside the

estimate. The Center for Legal and Social Studies, the Mothers of the Plaza de Mayo, and the Servicio Paz y Justicia continue to cite the 30,000 estimate that was commonly used during the period 1976 through 1983.

16. LAWYERS COMMITTEE FOR INTERNATIONAL HUMAN RIGHTS, VIOLATIONS OF HUMAN RIGHTS IN ARGENTINA: 1976-1979, at 35 (1979). At the time of the March 24, 1976, coup the government was already holding at least 5,182 detainees under the National Executive Power (PEN).

17. ARGENTINE NATIONAL COMMISSION ON THE DISAPPEARED, *supra* note 2, at 209-34.

18. U.S. DEP'T OF STATE, 94TH CONG., 2D SESS. HUMAN RIGHTS AND U.S. POLICY: ARGENTINA, HAITI, INDONESIA, IRAN, PERU, AND THE PHILIPPINES, REPORTS SUBMITTED TO THE HOUSE COMM. ON INTERNATIONAL RELATIONS 2 (Committee Print 1976) [hereinafter REPORTS]; *American is Abducted in Argentina*, N.Y. Times, Sept. 17, 1976, at A3 (regarding abduction of Patricia Erb); de Onis, *Argentina Beset by Arrest Queries*, N.Y. Times, Aug. 13, 1976, at A5, col. 1; de Onis, *U.S. Priest is Arrested at Argentine Seminary*, N.Y. Times, Aug. 6, 1976, at A2, col. 3 (regarding arrest of Father James Weeks); *Ex-Minneapolis woman jailed in Argentina*, Minneapolis Trib., May 18, 1976, at 8A, col. 3.

19. See 124 CONG. REC. 22,959 (1978).

home of one of her friends on January 27, 1977.²⁰ Hagelin's Swedish father sought the assistance of both the Swedish Ambassador to Argentina and the Swedish government. Later the Swedish media took up the case.²¹

Publicity concerning the disappearance of two French nuns brought more attention to the deteriorating Argentine situation. Sister Alice Domon, forty-years old, was abducted on December 8, 1977, in Buenos Aires, after a mass had been said for the thousands of disappeared persons in Argentina.²² Sister Leonie Duquet, sixty-one years old, was detained on December 10, 1977.²³ The Argentine government's refusal to acknowledge their detention prompted the French government and the French media to seek information on the whereabouts of the two French nationals.²⁴ While their fate is still unknown, there is some evidence that they were killed by being thrown from an airplane into the sea.²⁵

After March 1976, a considerable number of refugees from other countries in Latin America, who had previously sought refuge in Argentina, were abducted. Some were returned forcibly to their countries of origin where they suffered persecution, while others were threatened with abduction or *refoulement* (forced return to their countries).²⁶ The United Nations High Commissioner for Refugees sought to protect the refugees in Argentina, to obtain their release, or to find new homes for them in other countries.²⁷

20. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REPORT ON THE SITUATION OF HUMAN RIGHTS IN ARGENTINA at 67-69, OAS Doc. OEA/Ser.L/V/II.49, doc. 19, corr. 1, (1980) [hereinafter INTER-AMERICAN COMMISSION REPORT].

21. AMERICAS WATCH, *supra* note 9, at 41-43. The Argentine government, however, refused to acknowledge any information about Hagelin's whereabouts. One of Hagelin's friends witnessed her abduction by Navy Captain Alfredo Astiz, but the place and time of her death remain unknown. *Id.*

22. INTER-AMERICAN COMMISSION REPORT, *supra* note 20, at 102-03.

23. *Id.*

24. ARGENTINE NATIONAL COMMISSION ON THE DISAPPEARED, *supra* note 2, at 353.

25. AMERICAS WATCH, *supra* note 9, at 44.

26. I. GUEST, *supra* note 12, at 63-64.

27. See, e.g., AMNESTY INTERNATIONAL, REPORT OF AN AMNESTY INTERNATIONAL MISSION TO ARGENTINA, 6-15 NOVEMBER 1976, at 56-62 (1977) (AI Index: PUB 68/00/77) [hereinafter AMNESTY INTERNATIONAL, MISSION]; INTER-AMERICAN COMMISSION REPORT, *supra* note 20, at 105-11.

III. RESPONSES OF VARIOUS ORGANIZATIONS TO THE ARGENTINE CRISIS

A. THE ROLE OF ARGENTINE NONGOVERNMENTAL ORGANIZATIONS

In addition to the publicity from the abduction of foreigners caught in the ever-widening net of repression, several organizations in Argentina drew national and international attention to the human rights violations. For example, in April and May 1977, several women whose children had been abducted began to hold vigils in the Plaza de Mayo directly across from the President's residence. The women, called Mothers of the Plaza de Mayo, received considerable attention from the international media. During October and November 1977, another group of women organized themselves as the Grandmothers of the Plaza de Mayo. The two organizations became known for their courageous vigils that continually provided a public witness to the plight of the thousands of disappeared persons and their families.²⁸

Other Argentine organizations brought attention to their country's violations. These groups include the Permanent Assembly for Human Rights, established in 1976 prior to the military coup and comprised of politically diverse members, the Ecumenical Movement for Human Rights, composed of representatives of various religious denominations, and the Argentine League for the Rights of Man, formed in the 1930s.²⁹ The Permanent Assembly for Human Rights, in cooperation with the Argentine League for the Rights of Man, the Ecumenical Movement for Human Rights, and the Committee of Families of Persons who have Disappeared or have been Detained for Political Reasons, produced several lists of the thousands of individuals who disappeared after 1975. The October 1978 list contained 4,881 names and the May 1979 list contained 5,818 names.³⁰ The groups submitted the lists to the Argentine authorities, but the government confiscated publications containing the lists and forbade their distribution.³¹ In addition, on several occasions the Argentine authorities seized the offices of the organizations, their publications, and bank accounts.

28. I. GUEST, *supra* note 12, at 53-57.

29. ARGENTINE NATIONAL COMMISSION ON THE DISAPPEARED, *supra* note 2, at 421.

30. ARGENTINE NATIONAL COMMISSION ON THE DISAPPEARED, *supra* note 2, at 421.

31. INTER-AMERICAN COMMISSION REPORT, *supra* note 20, at 257-59.

The Center for Legal and Social Studies (CELS), formed in 1979, and the Servicio Paz y Justicia also worked against the repression in Argentina. Furthermore, as early as July 1976, the Roman Catholic Church in Argentina expressed concern about the killing of priests³² and the widespread human rights abuses.³³

Finally, some Argentineans were able to leave the country and complain about the situation in their homeland.³⁴ For example, the Argentine Commission for Human Rights, which had representatives in Geneva, Madrid, Mexico City, Paris, Rome, and Washington, D.C., presented testimony during hearings on September 28-29, 1976, before the House Subcommittee on International Organizations,³⁵ and on April 25, 1977, before the Senate Subcommittee on Foreign Assistance.³⁶ The Argentine Commission successfully sought the cutoff of United States military aid to the Argentine government, as will be discussed more fully below.

B. THE ROLE OF INTERNATIONAL NONGOVERNMENTAL ORGANIZATIONS

Several international nongovernmental organizations received information about the abuses in Argentina. Some sent factfinding visits to the country and issued significant reports that drew the attention of the Inter-American Commission on Human Rights of the Organization of American States and the United Nations, as well as alerted the international media. Among the most visible nongovernmental organizations were Amnesty International, which visited Argentina in November

32. de Onis, *Argentine Leader Meets Bishops on Slayings*, N.Y. Times, July 23, 1976, at A3, col. 6; *Pope Calls for 'Explanation' of Priests' Deaths in Argentina*, Wash. Post, Sept. 28, 1976, at A10, col. 1.

33. *Terror in Argentina*, N.Y. Times, July 30, 1976, at A20, col. 1; Freed, *Argentine Bishops Break Silence On Killings*, Minneapolis Star, July 31, 1981, at 10A, col. 1.

34. *Argentine Refugees: An Appeal to the U.N.*, Argentina Outreach Bulletin of the Argentine Information and Service Center 7 (Jan.-Feb. 1977).

35. *Human Rights in Argentina: Hearings Before the Subcomm. on International Organizations of the House Comm. on International Relations*, 94th Cong., 2d Sess. 10 (1977) (statement of Gustavo Roca, Member, Argentine Commission for Human Rights).

36. *Security Assistance Authorizations: Hearings Before the Subcomm. on Foreign Assistance, Subcomm. on Africa, and Subcomm. on Arms Control, Oceans, and International Environment of the Senate Comm. on Foreign Relations*, 94th Cong., 1st Sess. 180 (1977) (prepared statement of the Washington Information Bureau of the Argentine Commission for Human Rights).

1976,³⁷ the International Federation of Human Rights, which sent a delegation in January 1978, and the Lawyers Committee for Human Rights, which went on a factfinding visit in April 1979.

Soon after the coup Amnesty International began to receive information about individuals who had disappeared, been arrested, tortured, and/or killed.³⁸ In August 1976, the organization issued a summary of testimonies of torture and detention in Argentina. Amnesty International also issued urgent appeals to its members to write to the Argentine government, requesting cessation of the violations. The Argentine government received thousands of letters from Amnesty International members, principally from Europe, but also from other countries.

It is uncertain why the Argentine government accepted the November 1976 Amnesty visit. Perhaps it believed that it could thereby learn what Amnesty International knew and what its sources of information were. Amnesty International selected prominent delegates who gave visibility to the visit. They included Lord Avebury, a member of the British House of Lords, Father Robert Drinan, a member of the United States House of Representatives, and Patricia Feeney, a British member of the Research Department of the Amnesty International Secretariat.³⁹ The delegates met with numerous high ranking officials, although not with President Videla.⁴⁰ Twenty plainclothed police officers constantly followed the delegates and later questioned, intimidated, and even detained individuals who met with the delegates.⁴¹ The Amnesty International representatives also received testimony from torture victims.⁴² The most common torture methods included electric shocks with a prod, immersion of the head in water, covering the head with a wet cloth to make breathing almost impossible, beatings, keeping the prisoner hooded, forcing prisoners to stand in awkward positions for hours, depriving prisoners of food, drink, and sleep, and sexual abuse, including rape.⁴³ In addition, the delegates received personal testimony from the relatives of more than

37. *Id.* at preface.

38. *Id.*

39. *Id.*

40. *Id.*

41. AMNESTY INTERNATIONAL, MISSION, *supra* note 27, at 18.

42. *Id.* at 20-21.

43. *Id.* at 37.

one hundred individuals abducted by government agents.⁴⁴

Amnesty International published a report of its visit in March 1977. The report described the new repressive legislation⁴⁵ and estimated that there were between 5,000 and 6,000 political prisoners, at least two-thirds of whom had not been charged but were being detained incommunicado and indefinitely under the National Executive Power.⁴⁶ Amnesty International also reported that the most quoted figure for disappearances in Argentina at that time was 15,000.⁴⁷

Reporting later, Amnesty International summarized its efforts during this period:

In 1978, in view of continuing evidence of widespread "disappearances" in Argentina, Amnesty International launched a world-wide publicity campaign to bring pressure on the Argentine government to end its policy of systematic abduction and to acknowledge the detention of the "disappeared." In 1980 Amnesty International published a report on secret camps in Argentina based on the testimony of former detainees. Between 1977 and 1982, the organization sent regular communications to the United Nations and the Inter-American Commission on Human Rights of the Organization of American States documenting a consistent pattern of gross violations of human rights in Argentina.⁴⁸

The International Federation of Human Rights in Paris also sent a factfinding visit to Argentina on January 17-25, 1978. The delegation included a New York judge and two lawyers from Washington, D.C., and Paris. The delegation's purpose was to gather information on missing persons, particularly sixteen French citizens reportedly abducted in Argentina. The delegation held a press conference after its return to Washington, D.C., in which it announced that Argentine authorities for the first time had admitted holding 3,472 people in preventive detention.

Another organization, the Lawyers Committee for Human Rights,⁴⁹ organized a factfinding delegation of the Association of the Bar of the City of New York, with the endorsement of the American Bar Association, to visit Argentina in April 1979,

44. *Id.* at 28.

45. *Id.* at 11-16.

46. *Id.* at 18.

47. *Id.* at 27.

48. AMNESTY INTERNATIONAL, JUNTA TRIAL, *supra* note 3, at 7.

49. The Lawyers Committee for Human Rights was initially called the Lawyers Committee for International Human Rights and did use the "International" in its title at the time of its principal work on Argentina. Nevertheless, the organization is now known by the shorter title; and, to avoid confusion, that title is used here.

principally to investigate the situation of lawyers there.⁵⁰ They released their report in May 1979 and submitted it to the United Nations, in June 1979, under the confidential procedure established by Economic and Social Council resolution 1503. The Lawyers Committee documented the breakdown of the legal process in Argentina from 1976 to 1979 and assembled information about individual cases of disappeared, detained, tortured, and killed attorneys.

The International Commission of Jurists and its Centre for the Independence of Judges and Lawyers also issued reports and appeals on behalf of the lawyers, judges, and law professors who were detained, killed, or disappeared.⁵¹ Indeed, as early as March 1975, one year before the coup, the International Commission of Jurists sent a delegation to Argentina to inquire into the situation of thirty-two lawyers who were detained without charge or trial under the state of siege imposed in 1974.⁵²

C. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Beginning in 1975, before the coup, the Inter-American Commission on Human Rights received an increasing number of complaints about human rights violations in Argentina.⁵³ As early as 1978, the Commission asked for permission to conduct an on-site visit to Argentina to resolve these complaints.⁵⁴ When the Commission did not receive permission to enter the country, it began to prepare a report on the situation in Argentina. The Commission informed the Argentine government of its decision to prepare the report "in the belief that this is the most suitable method of determining precisely and objectively the status of human rights in a particular country at a particular time in history."⁵⁵ In early 1978, the Argentine government agreed to a visit for the limited purpose of reviewing the legal situation. The Commission, however, refused that limitation on

50. LAWYERS COMMITTEE FOR INTERNATIONAL HUMAN RIGHTS, VIOLATIONS OF HUMAN RIGHTS IN ARGENTINA: 1976-1979, at i (1979); Association of the Bar of the City of New York, Report of the Mission of Lawyers to Argentina, April 1-7, 1979, at 2-3.

51. See, e.g., *Attacks on the Independence of Judges and Lawyers in Argentina*, BULL. CENTRE INDEPENDENCE JUDGES & LAW., Apr. 1978, at 1-36; BULL. CENTRE INDEPENDENCE JUDGES & LAW., Sept. 1978, at 17; BULL. CENTRE INDEPENDENCE JUDGES & LAW., Oct. 1978, at 3-4; *Argentina*, 16 REV. INT'L COMMISSION JURISTS 1 (1976).

52. I. GUEST, *supra* note 12, at 20.

53. INTER-AMERICAN COMMISSION REPORT, *supra* note 20, at 1.

54. I. GUEST, *supra* note 12, at 173.

55. INTER-AMERICAN COMMISSION REPORT, *supra* note 20, at 1.

their on-site visit. Finally, in December 1978, the Argentine government notified the Commission that it would accept a visit following the standard Commission conditions that permitted the Commission to choose its own itinerary.⁵⁶

As with the Amnesty International mission, it is uncertain why the Argentine Government accepted the Commission's visit. Possibly the government believed that it had eliminated its principal opposition.⁵⁷ Alternatively, the United States might have pressured Argentina to accede to the Commission's visit. Following the coup, the State Department appealed to the Argentine government on behalf of United States citizens who were arrested or abducted.⁵⁸ The State Department informed Congress in December 1976 that the "subject of human rights has been raised repeatedly with representatives of the Government of Argentina during 1976 by the Department of State and our embassy in Buenos Aires."⁵⁹ Soon after President Carter took office in January 1977, Secretary of State Vance announced that United States military aid to Argentina would be reduced from \$48.4 million to \$15 million.⁶⁰ In July 1977, Congress cut off all military aid and sales to Argentina, effective September 30, 1978.⁶¹ During 1977 and 1978, State Department officials visited Argentina on several occasions to discuss the human rights situation,⁶² culminating in Secretary Vance's arrival in November 1977, when he submitted a list of thousands of disappeared persons to the Argentine govern-

56. The visit was initially scheduled for May 1979 and then was postponed because of the organizational changes which occurred in the Commission when the American Convention on Human Rights came into force.

57. Patrick Flood has stated that even before the Inter-American Commission on Human Rights visit, the Argentine authorities improved the physical conditions of confinement for political detainees and reports of ill-treatment declined. Flood, *U.S. Human Rights Initiative Concerning Argentina*, in *THE DIPLOMACY OF HUMAN RIGHTS* 129, 132-33 (D. Newson ed. 1986).

58. See *REPORTS*, *supra* note 18, at 2.

59. *Id.* at 4.

60. Oberdorfer, *In Rights Push, Vance Asks Cuts to Three Countries*, *Wash. Post*, Feb. 25, 1977, at A1, col. 3. A few days later Argentina announced that it would not accept further military aid. *Argentina and Uruguay Reject Aid From U.S.*, *Wash. Post*, Mar. 2, 1977, at A10, col. 1.

61. International Security Assistance Act of 1977, Pub. L. No. 95-92, § 11, 91 Stat. 619, amended by International Security Assistance Act of 1978, Pub. L. No. 95-384, § 12(c)(1), 92 Stat. 737 (repealed 1981). Congress passed the law including the cut-off provision on July 22, 1977, and the President signed it on August 4, 1977. See L. SCHOULTZ, *HUMAN RIGHTS AND UNITED STATES FOREIGN POLICY TOWARD LATIN AMERICA* 331-32 (1981).

62. DeYoung, *Carter Aide in Argentina to Gauge Rights Impact*, *Wash. Post*, Mar. 31, 1977, at A17, col. 5.

ment,⁶³ and Under Secretary of State Newsom's arrival in early 1978.

Additionally, in July 1978, the State Department indicated that it could not recommend Export-Import (EXIM) Bank financing for the export of Allis Chalmers generators for the Yaciretá hydroelectric power project.⁶⁴ During the same period, the United States began to abstain from voting on loans to Argentina by the Inter-American Development Bank.⁶⁵ In September 1978, however, the State Department approved the EXIM Bank financing, apparently in exchange for the Argentine government's acceptance of the Inter-American Commission visit.⁶⁶

Before the Inter-American Commission visited Argentina, it received briefings from representatives of several groups, including the Mothers of the Disappeared in Argentina, other Argentine human rights organizations, Amnesty International, and the Lawyers Committee for Human Rights. These preliminary interviews provided the Commission with information and ideas for their agenda. Six members of the Commission (from Brazil, Colombia, Costa Rica, El Salvador, the United States, and Venezuela) and a staff of five visited Argentina September 6-20, 1979. They met with President Videla, other government officials, political figures, representatives of various political parties, representatives of Argentine human rights organizations, officials of recognized trade unions, lawyers, and others.⁶⁷ The Commission collected numerous testimonies about violations from human rights organizations and received 5,580 complaints, of which 4,153 were new.⁶⁸

The Commission announced that it would receive testimonies in person from victims and their families. The most dramatic moment of the visit occurred in Buenos Aires, when thousands of individuals filled the street in front of the building where the Commission was hearing testimonies. That single outpouring of victims has been credited with giving confidence to many people to seek information concerning the whereabouts of their relatives, thus working toward the end of repression.

63. See de Onis, *Vance Wins Argentine Pledge on Nuclear Arms*, N.Y. Times, Nov. 22, 1977, at A3, col. 1.

64. Flood, *supra* note 57, at 133.

65. *Id.* at 131-32.

66. I. GUEST, *supra* note 12, at 172.

67. INTER-AMERICAN COMMISSION REPORT, *supra* note 20, at 2-6.

68. *Id.* at 6.

The Commission's report detailed numerous cases in which individuals were killed in custody.⁶⁹ It also described the prevalent practice of abducting individuals and transferring many of them to clandestine detention facilities.⁷⁰ The Commission referred to several specific cases, including those involving the disappearance of pregnant women, minors (such as Dagmar Hagelin⁷¹), a doctor, several lawyers, and refugees from Paraguay and Uruguay.⁷² The report then characterized as "unsatisfactory" the government response to the Commission's requests for information about the many cases.⁷³ The Commission noted that the government's refusal to cooperate rendered the writ of habeas corpus ineffective.⁷⁴ The Commission also stated that newspapers failed to report the crisis and even refused to print advertisements that included the word "disappeared."⁷⁵ While the Commission could not cite an exact number of disappearances,⁷⁶ it found the most reliable source to be a list of 5,818 it received from the Minister of Interior, prepared by the Permanent Assembly of Human Rights. The government clarified only a small number of those cases, including sixteen who were detained, seventy-three who reappeared, and eighteen who died.

The Commission also discussed the plight of persons in preventive detention and the government's refusal to permit detainees to exercise their constitutional right to choose exile rather than indefinite detention.⁷⁷ The Commission related the conditions of confinement in several principal prisons that they observed. Further, the Commission's report discussed violations of freedom of expression and religion, the freedom of human rights organizations to function, labor and political rights, and the right to fair trial.

The Commission's response to the government's argument that repression was needed to combat terrorism was an espe-

69. *Id.* at 29-52.

70. *Id.* at 53-56.

71. *See supra* note 20 and accompanying text.

72. INTER-AMERICAN COMMISSION REPORT, *supra* note 20, at 56-116; *Exiles in Argentina Reported Seized*, N.Y. Times, July 20, 1976, at A12, col. 4; *Exiles in Argentina*, Wash. Post, July 14, 1976, at A5, col. 1; de Onis, *Exiles in Argentina Struggle to Leave*, N.Y. Times, July 9, 1976, at A6, col. 6.

73. INTER-AMERICAN COMMISSION REPORT, *supra* note 20, at 121.

74. *Id.* at 122-23.

75. *Id.* at 124-25.

76. *Id.* at 136.

77. *Id.* at 139-77.

cially important element of the report.⁷⁸ The Commission stated that such a rationale could not justify the human rights violations by the government and it would therefore not investigate the conduct of terrorists.⁷⁹ The Commission further stated that its mandate was "to protect individuals whose rights have been injured by agents or organs of the State."⁸⁰ The government could not answer that stance of the Commission.

The Commission's report, widely disseminated outside Argentina, was very influential in focusing world public opinion on the human rights abuses in Argentina. The report thus made it difficult for outsiders to claim ignorance of the Argentine situation. When the Commission released the report, newspapers in Argentina published the conclusions and recommendations together with the government's reply. While the full report was not officially available in Argentina and no press dared to print it, 500 copies were informally distributed and 2,000 photocopies of a clandestine edition were disseminated to newspapers, journalists, judges, bishops, members of human rights organizations, and other individuals. Human rights organizations in Argentina could thereby use the report as proof of the disappearances and other rights violations, even though it was not legally published in Argentina until January 1984.⁸¹

After the Commission's visit, disappearances in Argentina appeared to diminish. Indeed, in September 1979, the government stated that it "ha[d] won the war" against subversion as of the time the Commission visited Argentina.⁸² The Commission noted that "compared with 1976, 1977, and 1978, there was a smaller number of disappeared detainees in 1979, and that since October 1979 [just after the Commission's visit of September 6-20, 1979], the Commission has received no new claims of disappearances."⁸³ Information submitted to the National Commis-

78. *Id.* at 22-27.

79. *Id.* at 25.

80. *Id.* at 26.

81. EL INFORME PROHIBIDO, INFORME DE LA O.E.A. SOBRE LA SITUACIÓN DE LOS DERECHOS HUMANOS EN ARGENTINA (1984).

82. INTER-AMERICAN COMMISSION REPORT, *supra* note 20, at 135. Some sources indicate that the opposition had been suppressed by the end of 1977. See, e.g., Note, *Constitutional Ambiguity and Abuse in Argentina — The Military Reign 1976-1983*, 6 N.Y.L. SCH. HUM. RTS. J. 353, 365 (1989).

83. INTER-AMERICAN COMMISSION REPORT, *supra* note 20, at 135 (footnotes omitted). The Commission was disturbed that a few abductions occurred even during the Commission's visit, but the abducted individuals were later acknowledged to be in preventive detention.

sion on the Disappeared⁸⁴ and to the United Nations Working Group on Enforced or Involuntary Disappearances indicates that fewer disappearances did occur after the visit. For example, the Working Group published a chart of the frequency of disappearances since 1971, based on information it received.⁸⁵ The following chart shows the frequency of disappearances from 1971 through 1980, with no recorded disappearances after 1980:

YEAR	MONTHS OF THE YEAR	DISAPPEARANCES REPORTED
1971	5 - 7	2
1974	8 - 12	5
1975	1 - 4	8
	5 - 7	10
	8 - 12	60
1976	1 - 4	184
	5 - 7	350
	8 - 12	600
1977	1 - 4	338
	5 - 7	323
	8 - 12	280
1978	1 - 4	93
	5 - 7	100
	8 - 12	64
1979	1 - 4	11
	5 - 7	12
	8 - 12	13
1980	1 - 4	18
	5 - 7	6
	8 - 12	4

As indicated above, the cause of the virtual cessation of disappearances following the Inter-American Commission's visit is uncertain. It might have resulted from a change in political climate created by the Commission's investigation,⁸⁶ alternatively, the Argentine government's "war against subversion"

84. See *supra* note 13.

85. REPORT OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES, at 21, U.N. Doc. E/CN.4/1986/18 (1986). But see REPORT OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES at 90, U.N. Doc. E/CN.4/1989/18, (1989) (graph of disappearances from 1974-1988 by quarter).

The statistics listed here are derived from the 1986 chart and not from the data used to develop the chart. Also, the disappearances reported to the Working Group do not reflect all disappearances but only those reported. Nonetheless, the frequency of disappearances reported to the Working Group tracks similar data from other sources. See, e.g., *supra* note 13.

86. See Krause, *Argentine Military Shaken By Rights Report of OAS*, Wash. Post, Jan. 23, 1980, at A24, col. 5.

might have been near completion by the date of the visit so that disappearances were no longer necessary.

In some ways the Argentine report represents a zenith of the Inter-American Commission's activities. Before the Argentine report, the Organization of American States (OAS) General Assembly discussed each of the Commission's factfinding reports. The Argentine report, however, was the last report that the General Assembly fully discussed. Because of the Argentine government's strong opposition to the report and the new Reagan administration's tacit support of the Argentine government, the report provoked much controversy when it was discussed at the General Assembly in November 1980. As a result, the OAS General Assembly has generally been reluctant to adopt a resolution concerning a country that has been the subject of Inter-American Commission scrutiny.⁸⁷ Several Latin American countries apparently have been concerned that they might be the subject of negative publicity from a strong factfinding report.⁸⁸

Remarkably, the Inter-American Commission took no significant public action against Argentina following its 1979 report and the 1980 General Assembly discussion of the report, though it could have pursued the problem of accounting for the thousands of disappearances that still remain unresolved.⁸⁹ Perhaps the Commission believed that the situation had so substantially improved that no further action was needed. Moreover, the change in the United States administration and its new approach to foreign policy resulted in a decrease in the Commission's financial resources and diminished United States concern about human rights. Therefore, the Commission lacked the same financial resources and political support that it had previously enjoyed.

D. UNITED NATIONS

The United Nations (U.N.) Sub-Commission on Prevention of Discrimination and Protection of Minorities convened for its twenty-ninth session in August 1976, only a few months after

87. One exception was a resolution that mentioned Suriname.

88. See T. BUERGENTHAL, R. NORRIS & D. SHELTON, *PROTECTING HUMAN RIGHTS IN THE AMERICAS* 204-13 (2d ed. 1986); C. MEDINA, *THE BATTLE OF HUMAN RIGHTS* 156-57 (1988).

89. The Commission did note this problem in its report. *INTER-AMERICAN COMMISSION REPORT*, *supra* note 20, at 135. The Commission may also have provided information to assist the prosecution of the nine military leaders in 1985. See *infra* Postscript.

the March coup. Under the authority received from Economic and Social Council (ECOSOC) resolution 1235 to examine the violation of human rights in any part of the world,⁹⁰ the Sub-Commission adopted a resolution on August 30, 1976, expressing deep concern "at reports from which it appears that basic human rights and fundamental freedoms are at present in jeopardy in Argentina."⁹¹ The resolution referred particularly to the plight of refugees and to the June 1976 request of the U.N. High Commissioner for Refugees for assistance in resettling persons who previously had sought refuge in Argentina. The Sub-Commission reported to the next session of the U.N. Commission on Human Rights in February and March 1977.

From 1977 to 1979, several nongovernmental organizations, France, Sweden, the United States, and other Western delegates to the Commission on Human Rights mentioned Argentina under Commission agenda item 12 authorized by ECOSOC resolution 1235. The first delegate to refer to Argentina was Brady Tyson, representing the new Carter administration. He characterized the Argentine situation as more serious than problems in Chile and Uruguay.⁹² The following year, former Congressman Edward Mezvinsky, representing the United States, expressed concern about abuses in Argentina after Argentina criticized the United States about its discrimination against blacks.⁹³

Also at the 1978 session, Ambassador Beaulne of Canada called for the application of international standards to the treatment of detainees and particularly sought procedures to avoid disappearances.⁹⁴ His statement was motivated by an investigative mission to Argentina undertaken by three members of the Canadian Parliament in November 1976.⁹⁵ Ambassador Soyer of France, Professor Ermacora of Austria,⁹⁶ and Ambassador Danelius of Sweden also briefly referred to Argentina.⁹⁷ Soyer's particular concern was the fate of two French nuns who disappeared in 1977. Similarly, Danelius's concern arose from

90. E.S.C. Res. 1235, 42 U.N. ESCOR Supp. (No. 1) at 17, U.N. Doc. E/4393 (1967).

91. Sub-Comm. Res. 2C at 44, U.N. Doc. E/CN.4/sub. 2/378 (1976). The Sub-Commission adopted the resolution by a vote of eight in favor, one against, and eight abstaining. *Id.* at 2.

92. 34 U.N. ESCOR (1420th mtg.) at 6, U.N. Doc. E/CN.4/SR.1420 (1977).

93. 34 U.N. ESCOR (1470th mtg.) at 2, U.N. Doc. E/CN.4/SR.1470 (1978).

94. *Id.* at 2-3.

95. 34 U.N. ESCOR (1469th mtg.) at 8, U.N. Doc. E/CN.4/SR.1469 (1978).

96. 34 U.N. ESCOR (1468th mtg.) at 8, U.N. Doc. E/CN.4/SR.1468, (1978).

97. *Id.* at 5.

the 1977 disappearance of Dagmar Hagelin.⁹⁸

During the 1979 Commission session, delegates of Austria,⁹⁹ Sweden,¹⁰⁰ and the United States¹⁰¹ again discussed abuses in Argentina, using a more global and detailed approach. For example, Professor Ermacora of Austria stated that there were 13,000 victims of repression, including 650 killed, 3,250 imprisoned, and 9,000 disappeared persons. Although those facts were presented pursuant to ECOSOC resolution 1235 and the Commission had received Sub-Commission resolution 2C of August 1976, the Commission neither established a working group to investigate the crisis as had been done for the Chilean (1975-1979) and South African (1967-present) situations, nor took any other action.¹⁰²

Instead of using the more expeditious and thus usually more effective approach available under resolution 1235, the U.N. pursued the slower, more elaborate, and confidential procedure delineated by ECOSOC resolution 1503.¹⁰³ Human rights advocates submitted the first communications on Argentina under the 1503 procedure during 1976 and 1977. The Working Group on Communications, however, determined that the communications did not merit transmission to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

During 1978 the Women's International Democratic Federation,¹⁰⁴ the International Federation of Human Rights,¹⁰⁵ and

98. *Id.* at 5.

99. 35 U.N. ESCOR (1517th mtg.) at 5, U.N. Doc. E/CN.4/SR.1517 (1979).

100. *Id.* at 3.

101. 35 U.N. ESCOR (1518th mtg.) at 11, U.N. Doc. E/CN.4/SR.1518 (1979).

102. Under the authority of ECOSOC resolution 1235, the Commission later developed a process for establishing special rapporteurs, special representatives, experts, and other envoys to monitor human rights violations in particular countries: Afghanistan (special rapporteur, 1984-present), Bolivia (special envoy, 1981-1982), Chile (special rapporteur, 1979-1990), Cuba (delegation of six members of the Commission, 1988), Democratic Kampuchea (member of the Sub-Commission to review materials, 1980-1983), El Salvador (special representative, 1981-present), Equatorial Guinea (special rapporteur, 1979; expert, 1980, 1984), Guatemala (special rapporteur, 1983-1985, special representative, 1986-1987), Iran (special representative or rapporteur, 1984-present), Poland (special rapporteur, 1982), and Romania (special rapporteur, 1989-present). F. NEWMAN & D. WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS* 113 (1990).

103. E.S.C. Res. 1503, 48 U.N. ESCOR Supp. (No. 1A) at 8, U.N. Doc. E/4832/(1970).

104. Communication No. 78/6/7,782 (Feb. 20, 1978) (copy on file at the Centre for Human Rights, Geneva, Switzerland).

Amnesty International submitted 1503 communications.¹⁰⁶ The Working Group on Communications, meeting in July 1978, decided that these communications presented a consistent pattern of gross violations of internationally recognized human rights. The Sub-Commission, however, under the influence of its Argentine member, Mario Amadeo, decided in August 1978 to keep the communications under consideration and not to transmit them to the Commission on Human Rights.

After the Sub-Commission refused to act, three more groups, the Grupo de Abogados Argentinos Exilados en Francia,¹⁰⁷ the Christian Democratic World Union,¹⁰⁸ and the Lawyers Committee for Human Rights, submitted communications pursuant to resolution 1503.¹⁰⁹ The Working Group on Communications again found a consistent pattern of gross violations in these communications, in addition to three held from 1978, and transmitted all six to the Sub-Commission. On September 5, 1979, the Sub-Commission voted — eighteen in favor, one (Argentina) against, and four abstaining — to send the Argentine situation to the Commission.¹¹⁰

During confidential sessions in February 1980, the Commission reviewed the communications referred by the Sub-Commission and the Argentine government's responses to those complaints. The Commission decided to keep the situation under consideration, to ask several searching questions of the Argentine government, and thus to pressure Argentina to make improvements. At that same session, the Commission authorized the establishment of the U.N. Working Group on Enforced or Involuntary Disappearances. Although designed to consider the problem of disappearances worldwide, the Argentine crisis motivated the establishment of the Group.¹¹¹ Indeed, it was the presence of Mothers of the Disappeared from Argentina in the

105. Communication No. 78/5/7,499 (May 19, 1978) (copy on file at the Centre for Human Rights, Geneva, Switzerland).

106. Communication No. 78/6/7,807 (June 30, 1978) (copy on file at the Centre for Human Rights, Geneva, Switzerland).

107. Communication No. 78/10/17,777 (Sept. 5, 1978) (copy on file at the Centre for Human Rights, Geneva, Switzerland).

108. Communication No. 79/5/4,447 (May 31, 1979) (copy on file at the Centre for Human Rights, Geneva, Switzerland).

109. Communication No. 79/6/5,081 (June 15, 1979) (copy on file at the Centre for Human Rights, Geneva, Switzerland).

110. I. GUEST, *supra* note 12, at 138.

111. Kramer & Weissbrodt, *The 1980 U.N. Commission on Human Rights and the Disappeared*, 1 HUM. RTS. Q. 18, 18-19 (1981).

Commission's meeting room that gave the Commission a sense of the urgent need for action on the problem of disappearances.

There were several more 1503 communications on Argentina from 1980 until 1983. The most important were from Amnesty International, the Lawyers Committee for Human Rights, the Permanent Assembly for Human Rights, the Center of Legal and Social Studies (CELS), the International Commission of Jurists, the Argentine Commission of Human Rights, and several individuals whose family members had been imprisoned or who had witnessed torture and killings. For each of these four years, the Working Group on Communications transmitted the relevant communications to the Sub-Commission, the Sub-Commission by consensus found a situation warranting Commission attention, and the Commission kept the situation under consideration. The high point occurred in 1980, when the Commission not only kept the situation under consideration, but posed several searching questions to the Argentine government about the disappeared persons and prison conditions.¹¹²

For several reasons, the U.N. could not develop a sufficient consensus to take action on Argentina during most of the 1976-83 period. First, the U.N. normally requires a substantial factual showing to pursue action. The U.N. action therefore stalled until the Inter-American Commission, Amnesty International, the Lawyers Committee for Human Rights, Pax Christi, Argentine human rights organizations, and other groups published persuasive reports. Second, under the 1503 procedure, the U.N. must establish a consistent pattern of reliably attested gross human rights violations, which required a factual showing that was not available until about 1979.

Third, the Argentine ambassador, Gabriel Martinez, was experienced and effective in using U.N. procedures to block action by the Commission on Human Rights.¹¹³ Fourth, Argen-

112. U.N. Doc E/CN.4/R.57 (1980); U.N. Doc. E/CN.4/R.541 (1980); M. Bartolomei, *supra* note **, at 65.

113. Ambassador Martinez was so influential that he claimed responsibility for having Theo van Boven fired in 1981 as Director of the U.N. Human Rights Division, because van Boven had encouraged the establishment of the U.N. Working Group on Enforced or Involuntary Disappearances. Interviews with T. van Boven, Apr. 1988 & Aug. 1989; *see also* I. GUEST, *supra* note 12 (detailing, *inter alia*, van Boven's fall from power). In 1983 Emilio Mignone of the Center of Legal and Social Studies in Buenos Aires came to the Commission on Human Rights and spoke on behalf of the International Commission of Jurists. I. GUEST, *supra* note 12, at 329-30. A representative of the Mothers of the Disappeared spoke for Pax Christi. When Mignone began his speech, Argentine Ambassador Martinez objected strenuously to his presentation and

tina's influential role in its own region and throughout the world reinforced Martinez's work. Governments were reluctant to take a stand against a Third World country that, unlike Chile, had important friends. Also, Argentina cared about its world image and struggled to present a favorable case against U.N. action. Accordingly, Argentina always responded to complaints, so that no government could accuse it of not cooperating. Argentina realized that failure to cooperate would provide justification for coercive U.N. action under the authority of ECOSOC resolution 1235. In addition, Argentina retained an expensive public relations firm to present a good image to the world.¹¹⁴ Furthermore, Argentine diplomats lobbied extensively in the capitals of governments that were members of the Commission and even threatened reprisals, although most of those threats were kept secret.

Fifth, an unusual alliance between Argentina and the U.S.S.R. made consensus for U.N. action more difficult to achieve. Trade relations between Argentina and the U.S.S.R. substantially increased as early as 1974, during a previous Argentine military government,¹¹⁵ and continued during the period of the Videla junta. The trade relations significantly increased after the United States imposed a grain embargo in 1979 against the U.S.S.R.¹¹⁶ The U.S.S.R. and its allies thus supported Argentina in resisting U.N. action. Furthermore, the U.S.S.R. generally opposed new U.N. implementation measures to respond to violations (except as to Chile, Israel, and South Africa), because of its fear that investigations might be extended to Eastern Europe. Therefore, Soviet support for Argentina was consistent with its own policies.

challenged his right to speak. *Id.* at 330. Niall MacDermot, Secretary-General of the International Commission of Jurists, along with representatives of the United States and one or two other governments, defended Mignone's right to represent the International Commission of Jurists and to speak under agenda item 12 about human rights abuses in Argentina. *Id.* at 331. Though Mignone's speech was delayed until later that day in an unsuccessful effort to avoid publicity, the presentation had a very strong effect on Commission members. *Id.*

114. See, e.g., Omang, *Argentina Hires U.S. Company to Improve Image*, Wash. Post, Dec. 28, 1976, at A9, col. 1; B. Marsteller, Report to Argentine Government, Re: Improving the International Image of Argentina (1978).

115. Novitski, *Argentina Seen Becoming Soviet Bloc Industry Base*, Wash. Post, June 9, 1974, at G-7, col. 1.

116. See Flood, *U.S. Human Rights Initiative Concerning Argentina*, in THE DIPLOMACY OF HUMAN RIGHTS 129, 136 (D. Newson ed. 1986). Argentina did join the United States boycott of the Moscow Olympics and voted in the U.N. General Assembly to condemn the Soviet invasion of Afghanistan. *Id.*

Sixth, the U.S. role shifted when President Reagan succeeded President Carter. During the Reagan administration in 1981 the United States was represented at the Commission by Richard Schifter and Michael Novack, who were newcomers to the U.N. and were principally concerned with using the U.N. to pressure Eastern Europe. They did not consider the Argentine case to be critical and they were not important players in deciding what action to take under the 1503 procedure, although the United States delegation did join the 1981 consensus for continuing consideration of the case.¹¹⁷ In 1982 and 1983, the United States focus was again on Eastern Europe, especially on Poland, and the United States again merely joined the consensus to continue the 1503 proceedings against Argentina without urging further action.

In contrast, the Carter administration was more concerned about the Argentine crisis. For example, the last Carter-appointed delegate to the U.N. Commission on Human Rights, Jerome Shestack, was an effective advocate for the establishment in March 1980 of the Working Group on Enforced or Involuntary Disappearances which was a partial response to the Argentine situation.¹¹⁸ Shestack also supported the Commission's decision to continue consideration of the situation in Argentina under the secret 1503 procedure.¹¹⁹

E. WAR IN THE SOUTH ATLANTIC

While the most severe human rights violations ceased in 1979, the war in the South Atlantic brought an end to the military government in Argentina. The war in the South Atlantic between Argentina and the United Kingdom occurred from April until June 1982.¹²⁰ The defeat of the Argentine military forced General Galtieri to resign. Indeed, even before the war, his government was criticized and weakened by strikes, demon-

117. It is worth noting that on March 17, 1981, President Reagan met with Retired General Roberto Viola, who was expected to be inaugurated President of Argentina later that month; and the State Department said that the United States would not criticize the human rights record of Argentina. *Reagan Meets with Argentine Leader*, Minneapolis Trib., March 18, 1981, at 3A, col. 6.

118. See Flood, *supra* note 116, at 134; Kramer & Weissbrodt, *supra* note 111, at 20.

119. The 1980 session was the first occasion on which the Commission had an opportunity to consider the 1503 case. (The Commission had received fragmentary information about Argentina under ECOSOC resolution 1235, but as discussed above, the Commission could not generate a consensus for action.)

120. A. DABAT & L. LORENZANO, ARGENTINA: THE MALVINAS AND THE END OF MILITARY RULE 99-101 (1984).

strations, and protests relating to human rights abuses under the military.¹²¹ General Bignone then prepared for elections in October 1983.¹²² Despite significant changes in the Argentine government, the U.N. Commission on Human Rights in February 1983 kept Argentina under consideration in the 1503 process.

President Raul Alfonsín became the new President of Argentina on December 10, 1983. Finally, in February 1984, the Commission on Human Rights ended consideration of the Argentine case under the 1503 process. Argentina, the Philippines, and Uruguay took the unusual step of requesting that all records pertaining to their countries under the 1503 procedure be made public.

IV. CONCLUSION

The Inter-American Commission responded much more effectively to the Argentine situation than the U.N. bodies. The Commission staff's ability to collect information and initiate efforts to obtain an on-site visit facilitated their prompt response. The Commission's small membership of seven individuals who meet two or three times a year also enables it to respond quickly to evolving human rights problems.¹²³ The Commission has thereby developed a record of visiting countries with human rights problems that is unmatched.¹²⁴ Unlike the U.N., it does not require a consistent pattern of gross violations to undertake a factfinding visit; it need only find that a visit might

121. *Id.* at 73-76; see also J. MALLOW & M. SELIGSON, *AUTHORITARIANS AND DEMOCRATS: REGIME TRANSITION IN LATIN AMERICA* 15 (1987) (tracing the redemocratization of Argentina); G. O'DONNELL, P. SCHMITTER & L. WHITEHEAD, *TRANSITIONS FROM AUTHORITARIAN RULE: PROSPECTS FOR DEMOCRACY* 19 (1986) (describing cyclical political landscape in Argentina); Remmer, *Redemocratization and the Impact of Authoritarian Rule in Latin America*, 17 *COMP. POL.* 253, 256 (1985) (analysis of Latin American countries that have attempted democracy).

122. AMNESTY INTERNATIONAL, *ARGENTINA: THE MILITARY JUNTAS AND HUMAN RIGHTS, REPORT OF THE TRIAL OF THE FORMER JUNTA MEMBERS* 6 (1987); see also ASPEN INSTITUTE, *STATE CRIMES, PUNISHMENT OR PARDON* (1989) (discussing how countries should deal with past human rights violators); Crawford, *Due Obedience and the Rights of Victims: Argentina's Transition to Democracy*, 12 *HUM. RTS. Q.* 17, 40 (1990) (detailing trial of General Bignone).

123. At the time of the Argentine case the Commission had resources to meet three times a year. Recently, fiscal restraint has permitted meetings only twice a year.

124. See Weissbrodt & McCarthy, *Fact-Finding by International Nongovernmental Human Rights Organizations*, 22 *VA. J. INT'L L.* 1, 31-34 (1981).

help resolve complaints that it has received. Arrangement of the visit and the visit itself both played crucial roles in reforming human rights in Argentina. The pro-human rights policies of the Carter administration also facilitated the Commission's work.

The Inter-American Commission has a relatively small staff who are motivated and flexible, and have an independent process for responding to alleged violations. In contrast, several U.N. procedures, particularly the procedures under ECOSOC resolution 1503, are complex and require many steps that are vulnerable to political influence. Furthermore, the Inter-American Commission's process is more open than the U.N. procedure. While the Inter-American Commission published a full, detailed, and influential report on Argentine human rights violations, U.N. discussions and decisions were almost entirely secret under ECOSOC resolution 1503. Indeed, the Inter-American Commission report formed the factual and policy foundation for later U.N. action.

The Commission on Human Rights and its Sub-Commission, with forty-three¹²⁵ and twenty-six members respectively, control the U.N. process. The two bodies meet separately, but only annually. Both require considerable efforts to obtain a consensus before action is possible. Visits to countries on behalf of these U.N. bodies are exceptional. It was the Argentine situation that finally prompted the U.N. to establish the Working Group on Enforced or Involuntary Disappearances, one of the first U.N. human rights bodies to develop a practice of visiting countries where problems exist.

The U.N. undoubtedly responded slowly to the Argentine case. Furthermore, once the Commission decided to respond by pursuing the case under the 1503 procedure, their consideration continued well beyond the time during which the worst violations occurred. Indeed, most of the disappearances, arrests, and killings ended before the 1503 process began. By 1982 and 1983, the principal need was to account for those persons who disappeared from 1976 to 1979. Therefore, not only was the Commission slow to act, but it was also slow to respond to improvements. The 1503 procedure ended in 1984 only after President Alfonsín took office. The Working Group on Enforced or Involuntary Disappearances is still pursuing explanations from Argentina about the disappeared persons.¹²⁶

125. In 1992 the Commission membership will rise to 53.

126. The Inter-American Court of Human Rights has decided that govern-

This Essay demonstrates the difficulty of identifying actions that may improve a human rights situation. Many varying factors may lead to a change. Nonetheless, it is possible to identify a complex combination of multilateral and bilateral pressures on the Argentine government, combined with internal pressures, that helped decrease and ultimately end the grave violations of human rights prevalent from 1976 to 1979 in Argentina. Indeed, a comparison of the frequency of disappearances during that period to the activities of nongovernmental organizations, governments, the Inter-American Commission on Human Rights, and U.N. bodies shows that the final cutoff of U.S. military aid to Argentina at the end of September 1978, and the subsequent Argentine acceptance of the Inter-American Commission on Human Rights visit, coincide with a significant decrease in the frequency of disappearances.¹²⁷ Having accepted the Inter-American Commission's visit, the Argentine government apparently recognized that it had to end the most virulent of its human rights abuses.

This Essay's conclusion suggests further study for the future: if human rights pressures from organizations and governments were successful in improving human rights in Argentina, the lessons of this case study must be tested in cases involving other countries and time periods to determine whether more general lessons can be drawn from this single case.

POSTSCRIPT

During five months in 1985, nine military leaders were on trial for specific offenses of the "dirty war." On December 9, 1985, the court issued its verdict. The tribunal sentenced General Jorge Videla and Admiral Emilio Massera, who commanded the army and navy, to life in prison. It sentenced two other participants to a term of years and acquitted the remaining defendants.¹²⁸ Although hundreds of other prosecutions were initiated, the Punto Final legislation and the Law of Due Obedience during the Presidency of Paul Alfonsín ultimately prevented action against almost all of the more junior officers

ments have an obligation to investigate cases of disappearances "as long as there is uncertainty about the fate of the person who has disappeared." I/A Court H.R., *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5, at 155. Article 13 of the Draft Declaration on the Protection of All Persons from Enforced or Involuntary Disappearances contains a similar norm. U.N. Doc. E/CN.4/Sub.2/1990/32, at 11, 15 (1990).

127. See K. Sikkink, *supra* note 1, at 1.

128. AMNESTY INTERNATIONAL, *supra* note 122, at 76-81.

and the perpetrators of the most heinous abuses. Human rights organizations continue to seek information about the fate of the thousands of disappeared persons whose cases remain unresolved.

Following President Raul Alfonsín's nearly six year term, Carlos Menem, a candidate allied with the Peronist Party, was elected President on May 14, 1989.¹²⁹ Carlos Menem assumed office in July 1989, several months ahead of schedule. On October 6, 1989, he pardoned the military officers and civilians who had been prosecuted, but not convicted, for their role in violating human rights and undermining democracy during the "dirty war." In addition, on December 29, 1990, President Menem pardoned thirty-nine military leaders who remained in prison after the 1985 trial and other high ranking officers imprisoned for crimes during the "dirty war."¹³⁰

129. According to the Constitution, President Alfonsín could not succeed himself. He supported Eduardo Angeloz, Governor of Córdoba Province, who was the presidential candidate of Alfonsín's Union Cívica Radical (UCR) party who lost the election to Carlos Menem.

130. Amnesty International, Argentina: Presidential Pardon to Military Officer Before Trial, Weekly Update NWS 8 (Jan. 16, 1991) (AI Index: AMR 13/WU 01/91).

